

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 18, 2003

Agenda ID #3094
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 03-09-043

This is the draft decision of Administrative Law Judge Bushey. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 12/18/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of NUVIP Insurance Pool for an
Order Pursuant to General Order 160-A,
Deeming its Liability Insurance In Compliance
With the Requirements of the General Order.

Application 03-09-043
(Filed September 30, 2003)

**OPINION FINDING THAT INSURANCE COMPLIES
WITH GENERAL ORDER 160-A****Summary**

This decision finds that the automobile liability insurance issued by NUVIP Vehicle Insurance Pool (NUVIP) is the substantial equivalent of the insurance required by General Order 160-A for private carriers.

Background

On September 30, 2003, NUVIP filed this application seeking a determination that the liability coverage provided to its members is adequate evidence of liability protection required by § 4001¹ and General Order (GO) 160-A for “not-for-hire” private carriers. NUVIP is not a California licensed insurer, *per se*, as is required by GO 160-A.

NUVIP states that it is similarly situated to the Nonprofits Insurance Alliance of California (NIAC), and that the Commission has found that insurance issued by NIAC meets the GO 160-A requirements. In Decision (D.) 01-07-021, the Commission concluded that Corporations Code § 5005.1(a)(4) authorized

¹ All citations are to the Public Utilities Code unless otherwise indicated.

NIAC to issue the very form of liability insurance GO 160-A requires of private carriers of passengers. Unfortunately, for purposes of GO 160-A, Corporations Code § 5005.1(b) also specifically provides that the coverage is not “insurance” and is not regulated under the Insurance Code. Thus, the coverage available from NIAC pursuant to Corporations Code § 5005.1 did not meet the strict definitional requirements of GO 160-A.

The Commission went on, however, to note that the Legislature had amended the Vehicle Code to resolve a similar inconsistency between the Vehicle Code and Corporations Code § 5005.1. Vehicle Code § 4000.37 mandates that when renewing a motor vehicle registration, the Department of Motor Vehicles (DMV) must require each applicant to submit documentation of insurance or other form of financial responsibility. Prior to its amendment, Vehicle Code § 4000.37 limited the DMV to accepting automobile liability coverage from companies regulated by the Insurance Code. Effective January 2, 2001, however, Vehicle Code § 4000.37 was amended to add charitable risk pools, such as NIAC.

The Commission concluded in D.01-07-021 that the Vehicle Code § 4000.37 directs the DMV to accept automobile insurance policies issued by NIAC, and any other Corporation Code § 5005.1 entity. Having found that the Legislature had determined that automobile insurance, in the proper amounts, issued by NIAC is equivalent to that issued by companies regulated by the Insurance Code, the Commission extended this determination to GO 160-A, and determined that NIAC’s insurance policies meet the requirements of GO 160-A.

The instant applicant, NUVIP, requests that we determine that it, too, is equivalent to a “company licensed to write such [liability] insurance in the State of California.” Consistent with the statutory analysis and our findings in D.01-07-021, we will grant NUVIP’s request.

Need for Hearing

No protests were filed, and no hearing is necessary. Pursuant to Rule 6.6, Article 2.5 of the Commission's Rules of Practice and Procedures ceased to apply to this proceeding.

Description of Applicant

NUVIP is a liability insurance pool organized under Section 5005.1. It has been in existence since 1985 and is incorporated as a tax-exempt, public benefit nonprofit corporation, owned and governed by its nonprofit member-insureds.

NUVIP's members number more than 280 California nonprofit organizations operating throughout the state, including senior centers, food banks, health clinics, churches, and disabled services programs. It offers only motor vehicle liability and related coverage.² Examples of NUVIP members include: Family Services Association of Center of San Diego County, Sunshine Adult Day Care Center, and the Samoan Community Development Center.

Requested Relief

Many of NUVIP's members are "not-for-hire" private carriers, who are required to register with the Commission pursuant to § 4001, *et seq.* Registration with the Commission requires proof of liability insurance. Consistent with D.01-07-021, NUVIP seeks the Commission's recognition of the liability insurance carried by its members so that they may register with the Commission as "not-for-hire" private carriers.

² The related services are: motor vehicle physical damage coverage, rental car reimbursement, and uninsured motorist property damage coverage.

Financial Resources and Operational History of NUVIP

NUVIP's application stated that in 2002, its net income was \$506,399, all retained to increase its retained earnings to \$1,847,296, over and above reserves for individual cases and actuarially determined reserves for all anticipated losses. Its current assets are \$6,641,764. In 2002, NUVIP total paid premium was \$3,682,866, and it incurred \$2,765,104 in claims.

NUVIP's application stated that in its normal course of business, it also reinsures with other companies to limit its loss on large claims. NUVIP stated that it self-insures losses up to \$500,000 and that it purchased excess insurance in 2003 from National Union Fire Insurance and Lexington Insurance Company, both Best Rated, California admitted insurers, to cover losses from \$500,000 to each member's limit of liability.³

Discussion

In D.01-07-021, we carefully reviewed the statutes and regulations to applicable to insurance organizations like NUVIP and determined that such organizations are substantially equivalent to "a company licensed to write such [liability] insurance in the State of California" as used in GO 160-A. We, therefore, directed our staff to accept proof of coverage from these organizations as complying with GO 160-A, subject to the conditions imposed in that order.

In D.01-07-021, we found that Corporations Code § 5005.1 requires an insurance pool to: (1) be composed of two or more corporations, (2) have an

³ NUVIP offers members limits of \$1 million, \$2 million, or \$5 million. Only 10 of its 300 members are insured at \$5 million per occurrence.

initial pool of resources of \$250,000 or more, and (3) require members to pay premiums necessary to “ensure a financially sound risk pool.”

NUVIP’s application shows that it meets these requirements. In fact, it has a sizable \$1.8 million surplus, which is currently increasing each year. Moreover, it only covers the first \$500,000 of each incident and obtains “re-insurance” coverage for losses above that amount.

As in D.01-07-021, we will impose certain conditions in order to protect the public. NUVIP stated that between 1988 and 2002, it paid out a total of \$15.4 million in liability claims, plus defense costs. The highest total payments, \$1.77 million, occurred in the 1998-99 fiscal year. Three of NUVIP’s four claims for over \$250,000 occurred in that “actuarially unusual” year. Over its years of operation, \$1.5 million is a typical year’s total claims. NUVIP retained earnings of \$1.8 million are over and above all sufficient reserves for all known or actuarially anticipated losses. Thus, NUVIP’s retained earnings exceed its greatest annual total liability. Significant protection for the public is also provided by NUVIP’s reinsurance in excess of \$500,000.

To maintain this level of protection for the public, we will require NUVIP to notify the Director of the Rail Safety and Carriers Division (RSCD) in writing (1) if its reserve amount falls below \$1,500,000, or (2) if there is any change in the reinsurance coverage arrangement.

Comments on Draft Decision

Although this matter is uncontested, we have imposed conditions on the grant of authority. Thus, the draft decision is subject to public review and comment prior to issuance. The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(2) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. NUVIP members have had difficulty registering with the Commission because a California licensed insurer as required by GO 160-A does not write their liability insurance.
2. NUVIP provides insurance to nonprofits by the pooling of premium contributions; in doing so, it is not an “insurance company” regulated by the Department of Insurance, but rather is regulated by the Attorney General as a charitable, nonprofit corporation, pursuant to § 5005.1 of the Corporations Code.
3. NUVIP application includes detail about its current financial resources and its recent claims handling history; this information indicates that it reinsures all liability above \$500,000.
4. NUVIP current \$1,800,000 surplus exceeds the total liability incurred in any year since NUVIP began operations.
5. It is appropriate for the Commission to monitor NUVIP’s reserve and reinsurance arrangements to ensure the protection of the public.

Conclusions of Law

1. Vehicle Code § 4000.37 directs the DMV to accept automobile insurance policies issued by NUVIP, and any other Corporations Code § 5005.1 entity; thus, the Legislature has determined that automobile insurance, in the proper amounts, issued by NUVIP is equivalent to that issued by companies regulated under the Insurance Code.
2. NUVIP is substantially equivalent to “a company licensed to write such [liability] insurance in the State of California” as used in GO 160-A.

3. The Commission staff should be directed to accept proof of coverage from NUVIP as complying with GO 160-A, subject to the conditions imposed in this order.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Proof of liability coverage in no less than the required amounts from NUVIP Vehicle Insurance Pool (NUVIP) shall be accepted as complying with General Order 160-A.
2. NUVIP shall notify the Director of Commission's Rail Safety and Carriers Division (RSCD) in writing within 10 days, if its surplus falls below \$1,500,000.
3. NUVIP shall notify the Director of RSCD, in writing, of any material change in its present reinsurance coverage arrangement.
4. Application 03-09-043 is closed.

This order is effective today.

Dated _____, at San Francisco, California.